BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development of, California Renewables Portfolio Standard Program.	Rulemaking 18-07-003 (Filed July 12, 2018)

PETITION OF THE JOINT PARTIES FOR MODIFICATION OF DECISION 20-10-005

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Pursuant to Rule 16.4 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, Burning Daylight, LLC,[1] JTN Energy, LLC,[2] Reido Farms, LLC[3] and Vote Solar[4] (together the "Joint Parties") jointly submit this Petition for Modification ("PFM" or "Petition") of Decision ("D.") 20-10-005, *Decision Resuming and Modifying the Renewable Market Adjusting Tariff Program* ("Decision" or "ReMAT Decision") in the above-captioned proceeding, Rulemaking 18-07-003 ("Proceeding"). The Commission issued the ReMAT Decision on October 16, 2020, with an effective date of October 8, 2020.[5] Consistent with Commission Rule 16.4(d), this Petition is timely filed. Consistent with Commission Rule 16.4(b), Joint Parties attach hereto Appendix A, a sworn declaration from Todd Thorner of JTN

[1] Burning Daylight, LLC was granted party status to this Proceeding on June 15, 2021.

[2] JTN Energy, LLC was granted party status together with other "Joint ReMAT Coalition Parties" to this Proceeding on July 22, 2020.

[3] Reido Farms, LLC was granted party status to this Proceeding on June 15, 2021.

[4] Vote Solar was granted party status to this Proceeding on July 21, 2020.

[5] D.20-10-005, pp. 1 & 69.

Energy, LLC, demonstrating the facts alleged herein that cannot be officially noticed—facts explaining relevant industry experience with ReMAT and related renewable energy projects.

I. INTRODUCTION

In the ReMAT Decision, the Commission adopted a new pricing methodology for determining utility avoided cost under ReMAT ("Pricing Methodology").[6] The ReMAT Decision derives the Pricing Methodology using "Reference Contracts," *i.e.*, a complete dataset of the utilities' Renewable Portfolio Standard ("RPS") contracts with RPS facilities with a capacity of 20 megawatts ("MW") or less,[7] to set the initial wholesale price of electricity for the ReMAT program and determine the "avoided cost."[8]

While the aim of the Decision was "to bring [ReMAT] into compliance with both the Public Utility Regulatory Policies Act of 1978 ["PURPA"[9]] and § 399.20 of the Public Utilities Code,"[10] Joint Parties herein identify several errors and oversights under this new Pricing Methodology that result in ReMAT pricing being set below the true avoided cost, contrary to

[6] *See* D.20-10-005, p. 16 ("Our task is to determine the proper avoided cost for ReMAT-eligible facilities using reasonable and practicable means."); *id.* at Conclusions of Law 21 ("The avoided-cost pricing methodology adopted here considers § 399.20(d)(2)(A) and reflects the 'long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's general procurement activities as authorized by the commission.'"); *see also* Cal. Pub. Util. Code § 399.20(d)(2) (requiring the Commission to "establish a methodology to determine the market price of electricity" purchased from eligible renewable generation facilities).

[7] *See* D.20-10-005, Appendix 1, Table 1 "List of IOUs' Executed RPS Contracts Used to Inform Fixed-Prices by ReMAT Product Category"; *see also id.* at 19.

[8] "Avoided costs" are those "that a purchasing utility avoids by procuring under PURPA." (D.20-10-005, p. 35.)

[9] 16 U.S.C §§ 824a-3 and 260, *et. seq.*

[10] D.20-10-005, p. 2.

PURPA and the State's legislative direction.[11] As a result, the Decision undermines this legislatively mandated program, frustrates California's efforts to expand use of renewable energy, and hampers efforts to improve grid resilience offered by local, distribution-connected generation.

Accordingly, Joint Parties respectfully urge the Commission to modify the ReMAT Decision, consistent with the below measures, to bring the Pricing Methodology into alignment with its intended objective:

A. The Pricing Methodology should be modified to properly account for the levelized price of contracts that use fixed escalating prices in the Reference Contracts data set;
B. Reference Contracts should exclude contracts from the Green Tariff Shared Renewables ("GTSR") program which, due to their unique contract structure, are not the costs paid by the utility buyer nor the prices received by the projects;
C. The Reference Contracts data set must be revised to exclude *facilities* greater than 20 MW, which the Decision explicitly sought to exclude;
D. The Reference Contracts data set must be revised to only include Avoided Cost Prices;
E. The Decision should be modified to include a direction that the "effective price" paid by the utility for each product type is equal to the avoided cost as determined by the Reference Contracts;
F. Transmission network upgrade costs should be reflected in the avoided cost rate.

[11] "It is the policy of this state and the intent of the Legislature to encourage electrical generation from eligible renewable energy resources." (Cal. Pub. Util. Code § 399.20(a) (policy and intent statement); *see also* D.20-10-005, p. 34.

II. PROPOSED MODIFICATIONS

A. The Commission Should Levelize Reference Contracts with Escalating Prices.

The Commission erred by not levelizing the contract price for contracts with escalating fixed prices used in the Reference Contracts. By erroneously setting the price based on the first-year of an escalating fixed price contract, the Commission undervalues the resource and has set the price below its true market price, *i.e.*, below the utility's avoided cost, contrary to legislative directive.[12] Section 399.20 unambiguously requires, and the ReMAT Decision correctly concludes, that the avoided cost methodology "must be the 'market price' that 'correspond[s] to the length of contracts with an electric generating facility."[13] The pricing calculations reflected in the Reference Contracts must be corrected to accurately reflect the contracts' true "market price."

The pricing error is evident from a review of the weighted average pricing adopted for both the Baseload Product and As-Available Peaking Categories, which are shown in Appendix A of the Decision. The Decision sets the price for the Baseload Product Category based on a single Baseload power purchase agreement ("PPA"), a 10-year contract with the Sonoma County Landfill LFGTE executed in 2015.[14] This contract, which was executed more than three years

[12] D.20-10-005, Conclusion of Law 20 ("The avoided-cost price under sec. 399.20 must be the 'market price' that 'correspond[s] to the length of contracts with an electric generating facility.") and Conclusion of Law 25 ("the relevant inquiry in setting rates under PURPA is the utility's avoided costs.").

[13] *Id*., Conclusion of Law 20 ("The avoided-cost price under sec. 399.20 must be the 'market price' that 'correspond[s] to the length of contracts with an electric generating facility.")

[14] *See id*., Appendix A, Table 2 "IOU RPS Contract Data Summary Used to Inform ReMAT Product Category Prices" (identifying one baseload contract of 5 MW capacity); Appendix A, Table 1, identifying the Sonoma County Landfill LFGTE Project procured by SCE with 5 MW capacity.

ago and is now accessible on the Commission's RPS database,[15] is priced at $73.50/MWh in the first contract year but then escalates by 1.5% each year[16] for the full ten-year term,[17] resulting in a price in the tenth and final year of $84.04/MWh. The Commission has thus erroneously set the Baseload Product Category price using the first-year price of a contract with a fixed annual price escalator, contrary to legislative direction.

California Public Utilities Code Section 399.20(d)(2)(A) requires the Commission to consider the "long-term market price of electricity for fixed price contracts, determined pursuant to an electrical corporation's general procurement activities" when setting the market price.[18] The Commission fails to meet this requirement because the Decision fails to recognize and distinguish between fixed price contracts, which feature a "flat fixed price" in which the price does not change over the contract term, as compared to an "escalating fixed price," in which the starting price increases by a fixed escalation factor that applies at set time intervals within the contract term. The escalation factor and set time intervals are determined in the contract, and

[15] CPUC RPS Reports and Data (hereafter, "RPS Database"), *available at* ftp://ftp.cpuc.ca.gov/RPS_PPAs. The contracts in this RPS Database form the basis of the Pricing Methodology adopted in the ReMAT Decision (see Decision 20-10-005, pp. 23, 29), and they are publicly available on the Commission's website. As such, they are properly subject to official notice pursuant to Commission Rules 13.10 and 16.4(b). (*See* D.00-08-029, 2000 Cal. PUC LEXIS 661, *7 (Cal. P.U.C. August 11, 2000) (explaining that "Courts routinely take judicial notice of records within their own files."); *see also* D.19-08-040, *Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services*, 2019 Cal. PUC LEXIS 392, *6 (Cal. P.U.C. August 15, 2019) (("Evidence Code section 452 allows for judicial notice of public entity regulations and legislation, court records, and indisputable facts, which either are common knowledge or can be verified by reasonably indisputable sources.").)

[16] *Renewable Power Purchase and Sale Agreement between Southern California Edison Company and Republic Service of Sonoma County Energy Producers, Inc.*, December 18, 2015, Section 1.06 ("The Product Price is Seventy-Three dollars and Fifty cents ($73.50) per MWh, escalated at one and a half percent (1.5%) per Term year.") A*vailable at* ftp://ftp.cpuc.ca.gov/RPS_PPAs.

[17] *Id.* at Section 1.01, p. 2 (establishing a 10-year contract term).

[18] *See also* D.20-10-005, pp. 27-28.

thus are known at time of execution.[19] Using only the first-year price of a fixed price contract that utilizes escalating fixed prices does not reflect the long-term market price of electricity for that fixed price contract as required by § 399.20(d)(2)(A).

When setting a single fixed price to represent the cost of a contract that utilizes an escalating fixed price structure, it is standard industry practice to derive a 'levelized price' of electricity over the full contract term by applying the buyer's relevant discount rate. The buyer, Southern California Edison Company ("SCE") in this case, treats long-term power purchase agreements as debt on its balance sheet and SCE's currently approved discount rate for long-term debt is 4.74%.[20] Accordingly, the fixed price for the Sonoma County LFGTE contract using this levelized methodology is $78.22/MWh.[21] ***The Commission erred by omitting this levelized price adjustment to properly reflect the market price of an escalating fixed price contract, and should immediately correct the price for the Baseload Product Category to $78.22/MWh.***

[19] *See Renewable Power Purchase and Sale Agreement between Southern California Edison Company and Republic Service of Sonoma County Energy Producers, Inc.*, December 18, 2015, Sections 1.01 (establishing term) and 1.06 (establishing escalation rate).

[20] *See* D.19-12-056, Decision on Test Year 2020 Cost of Capital for the Major Energy Utilities, December 19, 2019, Ordering Paragraph 1 (approving SCE's Cost of Capital for Long Term Debt at a rate of 4.74%).

[21] As an aside, noting that the Sonoma County LFGTE contract was executed in 2015 and that the CPUC's current ReMAT pricing methodology resets prices annually based on a rolling six-year Reference Contract dataset, it appears that in the next repricing in May 2022, that 2015 contracts will drop out of the Reference Contract dataset. Since the Sonoma County LFGTE project is the only contract in the CPUC's current dataset, the Joint Parties urge the Commission to retain the Sonoma County LFGTE contract in the Reference Contract dataset until such time as there are at least three Baseload Product Category contracts other than the Sonoma County LFGTE contract in the adjusted Reference Contract dataset.

The Commission should also ensure that any other contracts that use an escalating fixed price structure in its data set are appropriately levelized.[22] It is fairly common for PPA contracts to use an escalating fixed price structure.[23] Joint Parties also identified from the Commission's public RPS data that Sunray SEGS I, which is also listed in Table 1 of Appendix 1 to the Decision, also has a 1.5% annual escalator.[24] Therefore, it is likely that other contracts in the Reference Contract dataset require correction so that any escalating fixed contract prices are appropriately levelized. ***The Commission should recalculate the prices for As Available Peaking and As Available Non-Peaking Product Categories using levelized price for all Contracts in Reference Contracts that use escalating fixed prices.***

B. GTSR Contracts Should Not be Included in the Reference Contracts Data Set.

The Commission errs by including RPS Power Purchase Agreements ("PPAs") contracted under the Green Tariff Shared Renewables ("GTSR") program in its Reference Contracts data set.[25] The GTSR program was implemented pursuant to legislative directive in Senate Bill 43, and the purpose of the program is to expand access to renewable energy resources to all ratepayers by creating a mechanism whereby certain customer groups can purchase

[22] Joint ReMAT Parties note that, while certain of the Reference Contracts were available through the RPS Database, most of the 2015-2017 contracts from the Reference Data Set do not appear to be included on the file site.

[23] Appendix A, paragraph 3.

[24] RPS Database, 2015-12-18, Sunray Energy 3 – SEGS 1, PPA. A*vailable at* ftp://ftp.cpuc.ca.gov/RPS_PPAs.

[25] For example, the Jaton LLC and 5149 Lancaster Energy, LLC contracts are two solar PV resources that SCE procured as part of its GTSR program. (*See* Southern California Edison Company's (U 338-E) Quarterly Green Tariff Shared Renewables Program Progress Report, July 28, 2021, filed in A.14-01-007.)

electricity from either community-based renewable energy projects or from resources with a greater share of renewable energy.[26] Under the program, investor-owned utilities ("IOUs") "must permit customers to subscribe to the GTSR Program" until the state-wide cap of 600 MW is reached.[27] The contracted price of electricity in these PPAs is a floor price that is paid to the seller only if the seller fails to contract directly with retail customers for the full output of the project.[28] Under GTSR, Sellers may contract directly with retail customers and do so at a discount to their retail rate which will be priced far higher than the floor price.[29] Thus, the "Contract Price" in GTSR contracts is not a fixed price and does not reflect avoided costs, since they are not the price the seller receives for the output of the project. ***The Commission erred in including the GTSR contracts in the Reference Contracts and should immediately remove those contracts from the Reference Contracts.***

C. The Reference Contracts Data Set Must be Revised to Exclude Projects Greater than 20 MW.

The Commission rightly determined that "*the size of ReMAT projects are relevant in determining the avoided cost under ReMAT*."[30] Specifically, the Commission concluded that only prices from projects less than or equal to 20 MW are appropriate for determining the avoided cost of a 3 MW project due to the economies of scale afforded by larger projects:

> We agree that given the lack of contracts with small facilities in the 3 MW capacity range*, excluding executed RPS contracts with* ***large facilities*** and determining the weighted average price *using only RPS contracts with*

[26] D.15-01-051, pp. 3-4.

[27] *Id.* at 4.

[28] Appendix A, paragraph 3.

[29] *Id.*

[30] D. 20-10-005, Conclusion of Law 31.

> ***facilities*** *20 MW* and under is the most reasonable methodology of determining utilities avoided cost for ReMAT contracts.[31]

The Decision's inclusion of the five RE Gaskell West contracts in its Reference Contracts data set, however, is inconsistent this finding and requires correction. This is because RE Gaskell West 1, RE Gaskell West 2, RE Gaskell West 3, RE Gaskell West 4, and RE Gaskell West 5, each of which represents 20 megawatts of contracted capacity, are not separate facilities, but are in fact a single 125 MW facility with a single point of interconnection that is permitted as one facility,[32] and is thus well over the size threshold deemed relevant by the Commission for determining avoided cost under ReMAT. Indeed, these contracts are effectively "daisy-chained" projects, which is explicitly prohibited by ReMAT tariffs,[33] further emphasizing why they do not represent avoided cost.

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[31] D.20-10-005, p. 22 (emphasis added).

[32] *See* Large Generator Interconnection Agreement between SCE and the California Independent System Operator Corporation ("CAISO"), as filed with the Federal Energy Regulatory Commission on April 19, 2016, and included under SCE's Transmission Owner Tariff, FERC Electric Tariff, Volume No. 6. Consistent with Commission Rules 16.4(b) and Rule 13.10, Joint Parties submit that SCE's Tariff is properly subject to official notice. (*See* D.00-08-029, 2000 Cal. PUC LEXIS 661, *7 (Cal. P.U.C. August 11, 2000) (taking notice of tariff and explaining that "Courts routinely take judicial notice of records within their own files."); *see also* D.90-07-029, 1990 Cal. PUC LEXIS 613, *7, 37 CPUC2d 13 (Cal. P.U.C. July 6, 1990) (taking official notice of tariff).

[33] *See* SCE ReMAT Tariff, sheet 3, prohibiting "daisy chaining." ("The Applicant must provide to SCE an attestation that the Project is the only exporting project being developed or owned or controlled by the Applicant on any single or contiguous pieces of property. SCE may, at its sole discretion, determine that the Applicant does not satisfy this Eligibility Criteria if the Project appears to be part of a larger installation in the same general location that has been or is being developed by the Applicant or the Applicant's Affiliates.") *Available at* https://library.sce.com/content/dam/sce-doclib/public/regulatory/tariff/electric/schedules/other-rates/ELECTRIC_SCHEDULES_Re-MAT.pdf. Consistent with Commission Rules 16.4(b) and Rule 13.10, Joint Parties submit that SCE's Tariff is properly subject to official notice. (*See* D.00-08-029, 2000 Cal. PUC LEXIS 661, *7 (Cal. P.U.C. August 11, 2000) (taking notice of tariff and explaining that "Courts routinely take judicial notice of records within their own files."); *see also* D.90-07-029, 1990 Cal. PUC LEXIS 613, *7, 37 CPUC2d 13 (Cal. P.U.C. July 6, 1990) (taking official notice of tariff).

Since the Decision appropriately found that facilities greater than 20 MW do not represent Avoided Cost, the Reference Contracts must be revised to exclude contracts for portions of facilities larger than 20 MW, and should immediately remove the RE Gaskell contracts 1-5 from the data set, in addition to any other contracts that are parcel to one facility greater than 20 MW.

D. The Reference Contracts Data Set Erroneously Includes a Mix of Avoided Cost and Non-Avoided Cost Prices.

The Decision explains that "the relevant inquiry in setting rates under PURPA is the utility's avoided costs."[34] In other words, "PURPA mandates a focus on the costs the utilities would otherwise be required to pay for the next increment of procurement."[35] The Decision correctly recognizes this focus, and that PURPA directly states to consider "[t]he availability of capacity or energy from a qualifying facility during the system daily and sesaonal peak periods" when setting avoided-cost rates."[36] Notwithstanding this clear understanding of avoided cost, however, the Decision errs by including contracts where the contract price is not reflective of what the utility pays, and its direction that the utilities provide "effective prices" calculating the ReMAT Tariff price falls short.[37]

In many California investor-owned utility RPS contracts, the contract includes a "Payment Section" or Exhibit wherein the ultimate costs owed under the contract are calculated by multiplying the metered production in MWh in a given hour by the Contract Price multiplied

[34] D.20-10-005, p. 34; *see also id.* at 34-35 ("…the proper methodology for determining rates under PURPA… is to focus on the costs that a purchasing utility avoids by procuring under PURPA.")

[35] *Id.* at 40.

[36] *Id.* at 25 (citing 18 C.F.R. § 292.304(e)(2).)

[37] *Id*. at 35.

by the Payment Allocation Factor for the Time-of-Delivery ("TOD") period being calculated (the Payment Allocation Factor and TOD periods together are commonly referred to as "TOD Factors"). The hourly settlements using this methodology are summed for each month to establish the monthly settlement which ultimately determine what the utility actually pays, *i.e.* the effective price, for the power delivered.[38] These TOD Factors either increase or decrease the amount actually paid for electricity, and result in the effective price that is equal to the utility's avoided cost. As such, it is an error to use the Contract Price alone as a proxy for avoided cost, without adjusting for TOD Factors. In contracts that do not use TOD Factors, the defined Contract Price is reflective of what the utility actually pays, and thus is already reflective of the utility's avoided cost.

To illustrate this distinction, Tables 1 and 2 below illustrate a single day of costs for a solar photovoltaic project both with the same contract price, but with and without TOD factors.

Table 1: Contract with no TOD factors Where Contract Price equals Avoided Cost.

Contract Price	$50.14																							
Hour Ending	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Output (MWh)	0.00	0.00	0.00	0.00	0.00	0.00	0.05	0.27	0.76	0.60	0.83	0.83	0.82	0.83	0.83	0.83	0.81	0.68	0.33	0.00	0.00	0.00	0.00	0.00
TOD Factor	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Rate ($/MWh)	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50	50
Payment ($)	0	0	0	0	0	0	3	13	38	30	42	42	41	42	42	42	41	34	16	0	0	0	0	0

Total Generation	8.474
Total Payment	$425
Avoided Cost	**$50.14**

[38] Appendix A, paragraph 4.

Table 2: Contract with TOD factors: Contract Price does not equal Avoided Cost.

Contract Price	$50.14																							
Hour Ending		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Output (MWh)		0.00	0.00	0.00	0.00	0.00	0.00	0.05	0.27	0.76	0.60	0.83	0.83	0.82	0.83	0.83	0.83	0.81	0.68	0.33	0.00	0.00	0.00	0.00	0.00
TOD Factor		0.94	0.94	0.94	0.94	0.94	0.94	0.94	0.94	1.11	1.11	1.11	1.11	1.22	1.22	1.22	1.22	1.22	1.22	1.11	1.11	1.11	1.11	1.11	0.94
Rate ($/MWh)		47	47	47	47	47	47	47	47	56	56	56	56	61	61	61	61	61	61	56	56	56	56	56	47
Payment ($)		0	0	0	0	0	0	2	13	42	33	46	46	50	51	51	51	50	42	18	0	0	0	0	0
Total Generation	8.474																								
Total Payment	$495																								
Avoided Cost	**$58.46**																								

In this example, Table 2 shows that a contract with TOD Factors results in an avoided cost much higher than the Contract Price, illustrating why contract prices are not an accurate indicator of avoided cost without adjusting for the TOD factors.

The Commission erred by including in the Reference Contracts data set Contract Prices that are not adjusted for TOD Factors and therefore not reflective of the utility's avoided cost.

E. The Decision Should be Modified to Include a Direction that the "Effective Price" Paid by the Utility for each Product Type is Equal to the Avoided Cost as Deteremined by the Reference Contracts.

The ReMAT Decision directs the IOUs to apply the most recent Commission-approved TOD Factors to the ReMAT prices determined based on the Reference Contract dataset.[39] But if the prices determined based on the Reference Contracts are already avoided costs, having already accounted for TOD factors, then applying current TOD Factors changes the effective price the utility pays and thus results in payments that are no longer avoided cost. The implications of TOD Factors apply not just to payments that generators receive under a ReMAT contract, but also to the cost the utility incurs to pay renewable generators in market that are represented in the

[39] D.20-10-005, p. 33 & Ordering Paragraph 6.

Reference Contract dataset that sets the avoided cost for the ReMAT generators. Depending on the technology and resulting generation profile of a generator, the TOD Factors can result in increasing or decreasing payments compared to the contract price. But in either case, applying TOD factors changes the payments so they no longer are avoided costs. Therefore, while the Section D, above, explains why it is important to apply TOD factors to a contract price to determine avoided cost, the present section explains why it is not appropriate to apply TOD factors a second time.

Under the most recently adopted ReMAT prices,[40] the avoided cost rate for the As-Available Peaking product category is $50.81/MWh.[41] SCE found that for a solar photovoltaic generator, applying TOD Factors would result in an effective price of $36.56/MWh for this product category,[42] which is 28% lower than the avoided cost rate. Simply, SCE's analysis shows that ReMAT is offering an as-available peaking price 28% lower than its avoided cost in conflict with the Decision, state law, and federal law.

The Decision should be modified to include a direction that the "effective price" paid by the utility for each product type is equal to the avoided cost as deteremined by the Reference Contracts.

[40] Consistent with the direction in D.20-10-005, Ordering Paragraph 3, the Energy Division updated the administratively set fixed avoided-cost rate for each Product Category on July 15, 2021, pursuant to Resolution E-5154, *available at* https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M394/K038/394038449.PDF.

[41] Resolution E-5154, p. 6.

[42] SCE Advice Letter 4564-E-A, September 1, 2021 (SCE's supplemental advice letter "to add effective pricing to the update required by Resolution E-5154 and Ordering Paragraph 6 of D.20-10-005). *Available at* https://library.sce.com/content/dam/sce-doclib/public/regulatory/filings/approved/electric/ELECTRIC_4564-E-A.pdf.

F. Transmission Network Upgrade Costs Should be Reflected in the Avoided Cost Rate.

Projects interconnecting to the transmission grid do so under the CAISO tariff. These interconnections often include upgrades characterized as "Network Upgrades," which while paid for in advance by the interconnecting customer, are ultimately refunded and paid for by the interconnection utility, socializing these costs to the transmission ratepayer.[43]

In contrast, projects interconnecting to the distribution grid rarely, if ever, have transmission upgrades.[44] None of the Joint Parties is aware of a distribution interconnected project that had socialized Network Upgrades.[45] Distribution interconnected projects must pay for all of their interconnection costs while transmission interconnected projects receive a subsidy which is not reflected in their avoided cost.[46]

The Commission erred in not accounting for the cost of Network Upgrades when calculating the Avoided Cost of transmission-interconnected projects in the Reference Contracts. Either the Commission should only use distribution interconnected projects in the list of Reference Contracts, or the costs of transmission interconnected projects in the

[43] CAISO Tariff, Section 14.3.2.1 of Appendix DD; Section 11.4.1.1 of Appendix EE; Section 5.3.1.1 of Appendix FF. Consistent with Commission Rules 16.4(b) and Rule 13.10, Joint Parties submit that these CAISO Tariff provisions are public entity regulations that are properly subject to official notice. ("Evidence Code section 452 allows for judicial notice of public entity regulations and legislation, court records, and indisputable facts, which either are common knowledge or can be verified by reasonably indisputable sources." (D.19-08-040, *Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services*, 2019 Cal. PUC LEXIS 392, *6 (Cal. P.U.C. August 15, 2019).)

[44] Appendix A, paragraph 5.

[45] *Id.* at paragraph 6.

[46] *Id.* at paragraph 7.

Reference Contracts should have their costs adjusted upwards to account for the cost of the socialized Network Upgrades.

III. CONCLUSION

For the foregoing reasons, Joint Parties respectfully urge the Commission to modify Decision 20-10-005 to bring the Commission's avoided cost Pricing Methodology into compliance with both federal mandates under PURPA, and with the State's legislative directive "to encourage electrical generation from eligible renewable energy resources."[47]

Respectfully submitted,

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Dated: October 8, 2021

[47] Cal. Pub. Util. Code § 399.20(a).

APPENDIX A

Declaration of Todd Thorner

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development of, California Renewables Portfolio Standard Program.	Rulemaking 18-07-003 (Filed July 12, 2018)

DECLARATION OF TODD THORNER IN SUPPORT OF PETITION FOR MODIFICATION

I, Todd Thorner, declare as follows:

1. I am the CEO of JTN Energy LLC. My business address is 1555 Botelho Drive, Ste. 110, Walnut Creek, CA 94596. I have a personal knowledge of the facts and representation herein and, if called upon to testify, could and would do so, except for those facts expressly stated to be based upon information and belief, and as to those matters, I believe them to be true.

2. I provide this declaration in support of factual statements made in the Petition for Modification ("PFM") of Decision ("D.") 20-10-005 filed on behalf of the Joint Parties.

3. In the 20 years I have been working in the renewable power generation business, I have reviewed at least one hundred renewable power contracts and I have directly negotiated over two dozen power sales contracts for individual renewable generating facilities. While I have observed in the last five years greater preference among power buyers for fixed price contracts versus contracts that escalate based on some market reference index, e.g., some measure of consumer price index (CPI) or other measure of inflation, power buyers still commonly contract using fixed price contracts with either fixed flat prices or fixed escalating prices with the escalation factor typically set at a fixed percentage increase each year of the contract term.

3. To the best of my knowledge as an industry participant and based on my review of publicly available information on the Green Tariff Shared Renewables ("GTSR") program from the Commission and investor-owned utilities, including my review of the investor-owned utilities' Request for Offer ("RFO") protocols for the GTSR program in 2020 and 2021, my participation in the utilities' GTSR program RFO webinars, and my discussions with a project developer whose company has contracted with SCE under the GTSR program, the contracted price of electricity in GTSR PPAs is a floor price that is paid to the seller only if the seller fails to contract directly with a retail customer. Additionally, sellers may contract directly with retail customers and do so at a discount to their retail rate, which will be priced far higher than the floor price.

4. Based on my knowledge and experience, many of the pro forma Renewable Portfolio Standard ("RPS") contracts issued by California's investor-owned utilities utilize payment calculation method, defined in the subject contract, whereby the contract price, or "Product Price" as it might be defined in the contract, is multiplied by a Payment Allocation Factor for the time of delivery ("TOD") period being calculated. This calculation is completed for each settlement interval, hourly in this case, and the hourly settlements are summed up for every month resulting in monthly settlements that reflect average prices paid per megawatt hour of production that will be higher or lower than the contract price, depending on when the project generated and the specific TOD Factors included in that contract.

5. Based on my knowledge and experience, projects interconnecting under the Commission's Rule 21 or FERC-jurisdictional Wholesale Distribution Access Tariff to the distribution grid rarely, if ever, require transmission Network Upgrades as defined in the CAISO tariff.

6. None of the Joint Parties is aware of a project interconnecting to the distribution grid that required transmission Network Upgrades.

7. Based on my knowledge and experience, projects interconnected to the distribution grid pay for all upgrades necessary for the distribution grid to accommodate the interconnection. In contrast, projects interconnecting to the transmission grid have both Interconnection Facilities which are paid for by the project and Network Upgrades which are financed by the project but then refunded to the project by the transmission owner and recovered through their Transmission Access Charges. As such, transmission interconnected projects receive a subsidy which is not reflected in their avoided cost.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on this 8th day of October, 2021 at Walnut Creek, California.

/s/ Todd Thorner
Todd Thorner